85-1825 (1)

Supreme Court, U.S.
FILED
APR 11 1986
JOSEPH F. SPANIOL, JR.
CLERK

NUMBER _____

IN THE SUPREME COURT

OF THE UNITED STATES

October Term, 1985

PETITIONERS MELVIN EVANS, JAMES C. ARRANT, DORIS M. AULDS, NOLAN A. BLOOD, CLAUDE L. BOLES, IRA A. BROWN, WILLIAM S. BRUNSON, GEORGE L. CANFIELD, TOMMY CHRISTY, EDWARD R. CORLEY, ELISHA DAWSON, JR., VAUDIE LEE FOSTER, SIMMIE L. HEISLER, RICHARD E. HARE, BURRELL R. NEWMAN, KENNETH O. SAWYER, LENORA FAYE SAWYER, CHARLES W. WALKER, NOLEN B. WHITE, JIMMY J. WILSON, JAMES C. WILLIAMS, MABLE E. WINBOURNE, J. P. WYATT, KENNETH L. BRYAN, VERNON C. KING, AND ISMAEL E. STUCKEY, PETITIONERS

VERSUS

OUACHITA LOCAL NUMBER 654,
UNITED PAPERWORKERS INTERNATIONAL
UNION and UNITED PAPERWORKERS
INTERNATIONAL UNION

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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QUESTIONS PRESENTED

Whether the holding of the United States Supreme Court in the case of Del Costello vs. Teamsters, 462 U.S. 1, 103 S. Ct. 2281, 76 L. Ed. 2d 476 (1983) decreeing a six (6) month limitation period for "hybrid" unfair representation actions against the employer and the union, is retroactive.

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LIST OF PARTIES

The parties are named in the caption of this case. Manville Forest Products Corporation was formerly a party to the suit but was released from the suit earlier and is not involved in this stage of these proceedings.

NUMBER _____

IN THE SUPREME COURT

OF THE UNITED STATES

October Term, 1985

PETITIONERS MELVIN EVANS, JAMES C. ARRANT, DORIS M. AULDS, NOLAN A. BLOOD, CLAUDE L. BOLES, IRA A. BROWN, WILLIAM S. BRUNSON, GEORGE L. CANFIELD, TOMMY CHRISTY, EDWARD R. CORLEY, ELISHA DAWSON, JR., VAUDIE LEE FOSTER, SIMMIE L. HEISLER, RICHARD E. HARE, BURRELL R. NEWMAN, KENNETH O. SAWYER, LENORA FAYE SAWYER, CHARLES W. WALKER, NOLEN B. WHITE, JIMMY J. WILSON, JAMES C. WILLIAMS, MABLE E. WINBOURNE, J. P. WYATT, KENNETH L. BRYAN, VERNON C. KING, and ISHMAEL E. STUCKEY, PETITIONERS

VERSUS

OUACHITA LOCAL NUMBER 654, UNITED PAPERWORKERS INTERNATIONAL UNION and UNITED PAPERWORKERS INTERNATIONAL UNION

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

TO THE HONORABLE, THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The Petitioners, MELVIN EVANS, JAMES C, ARRANT,

DORIS M. AULDS, NOLAN A. BLOOD, CLAUDE L. BOLES, IRA A. BROWN, WILLIAM S. BRUNSON, GEORGE L. CANFIELD, TOMMY CHRISTY, EDWARD R. CORLEY, ELISHA DAWSON, JR., VAUDIE LEE FOSTER, SIMMIE L. HEISLER, RICHARD E. HARE, BURRELL R. NEWMAN, KENNETH O. SAWYER, LENORA FAYE SAWYER, CHARLES W. WALKER, NOLEN B. WHITE, JIMMY J. WILSON, JAMES C. WILLIAMS, MABLE E. WINBOURNE, J. P. WYATT, KENNETH L. BRYAN, VERNON C. KING, and ISHMAEL E. STUCKEY pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in the above entitled case on February 14, 1986.

QUESTIONS PRESENTED

Whether the holding of the United States Supreme Court in the case of Del Costello vs. Teamsters, 462 U.S. 1, 103 S. Ct. 2281, 76 L. Ed. 2d 476 (1983) decreeing a six (6) month limitation period for "hybrid" unfair representation actions against the employer and the union, is retroactive.

OPINIONS BELOW

The opinion of the United States District Court for the Western District of Louisiana, Honorable F. A. Little, Judge, entitled "Ruling" is unreported and is printed in Appendix A hereto, infra, page 11. The opinion and judgment of the United States Court of Appeals for the Fifth Circuit in this matter, entered on February 14, 1986, is unreported and is printed in Appendix A hereto, infra, page 16,. The certified copy of the judgment of the Fifth Circuit was issued as and for the mandate of the Court as reflected by the notice from the Clerk of the United States Court of Appeals for the Fifth Circuit. A copy of that notice is also included in Appendix A, page 14.

JURISDICTION

The judgment of the United States Court of Appeals for the Fifth Circuit (Appendix A, infra, page 16) was entered on February 14, 1986. Re-hearing was not applied for. The juris-

diction of the Supreme Court is invoked under 28 USC 1254.

STATUTES INVOLVED

The statutes involved herein are as follows:

29 USC 185 :

(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

(b) Any labor organization which represents employees in an industry affecting commerce as defined in this chapter and any employer whose activities affect commerce as defined in this chapter shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

(c) For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or

acting for employee members.

(d) The service of summons, subpoena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

(e) For the purposes of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

29 USC 187:

(a) It shall be unlawful, for the purpose of this section only, in an industry or activity affecting commerce, for any labor organization to engage in any activity or conduct defined as an unfair labor practice in section 158(b) (4) of this title.

(b) Whoever shall be injured in his business or property by reason or any violation of subsection (a) of this section may sue therefor in any district court of the United States subject to the limitations and provisions of section 185 of this title without respect to the amount in controversy, or in any other court having jurisdiction of the parties, and shall recover the damages by him sustained and the cost of the suit.

STATEMENT OF THE CASE

Petitioners are former employees of Manville Forest Products Corporation and worked at the Manville paper plant in West Monroe, Ouachita Parish, Louisiana. In August, 1981, Petitioners were permanently laid off from their employment and were not allowed to exercise seniority rights in order to retain their employment. They filed a grievance protesting the refusal to allow them to exercise seniority rights in other plants but the grievance was not processed to arbitration after a union vote not to arbitrate, which vote was held without allowing Petitioners to participate. The union contended that Petitioners were no longer union members because their plant was closed permanently and they therefore had no plant to be recalled to. The union vote was not to pursue the grievance through arbitration was on November 3 and November 10, 1981. The present suit for damages against the local and international unions for unfair representation and against Manville for exercise of seniority rights and damages was filed on July 21, 1982 in the United States District Court for the Western District of Louisiana, under 29 USC 185 and 187.

The progress of the suit was delayed by the Chapter 11 Bankrupcy of Manville Forest Products Corporation which was filed in the United States Bankruptcy Court for the Southern District of New York sitting at New York, New York. As a result of this filing, this suit was stayed not only against Manville but against the Defendant unions.

During the time that the suit was stayed, this Honorable Court decided the case of Del Costello vs. Teamsters, 462, U.S. 1, 103 S. Ct. 2281, 76 L. Ed. 2d 476 (1983), which decision instituted a limitations period of six (6) months in which to file tyis type of suit. At the time this suit was filed, Louisiana law controlled the issue and allowed one (1) year for filing and Petitioners were well within the Louisiana time period but approximately two (2) months beyond the six (6) month period set by this Court in Del Costello. The Del Costello decision was rendered approximately one (1) year after the present suit was filed.

The employer, MANVILLE FOREST PRODUCTS COR-

PORATION, was eliminated from this litigation by the United states Bankruptcy Court for the Southern District of New York. Accordingly, that party is no longer involved in these proceedings. Eventually, the Defendant unions filed a motion for summary judgment contending that the six (6) month rule of Del Costello should be applied retroactively to time bar this suit. That motion was granted by the United States District Court for the Western District of Louisiana and the decision was appealed to the United States Court of Appeals for the Fifth Circuit, which affirmed that decision.

Petitioners seek certiorari for review of this decision.

REASONS FOR GRANTING WRIT

Petitioners submit that the issue of whether this Court's holding in Del Costello vs. Teamsters, 462 U.S. 1, 103 S. Ct. 2281, 76 L. Ed. 2d 476 (1983), should be applied retroactively is ripe for decision in this case by this Honorable Court. The Federal Circuit Courts have split on this issue. In the case of Edwards vs. International Brotherhood of Teamsters, 719 F. 2d 1036 (9th Cir., 1984), the Ninth Circuit held that the rule of Del Costello was not to be applied retroactively. The Fifth Circuit has held that the Del Costello rule is to be applied retroactively in Gray vs. Amalgomated Meat Cutters Local 540, 736 F. 2d 1055 (5th Cir., 1984) and Edwards vs. Sea-Land Service, Inc., 720 F. 2d 857 (5th Cir., 1983). Other circuits have ruled that the Del Costello rule is to be applied retroactively. See Graves vs. Smiths Transfer Corporation, 736 F. 2d 819 (1st Cir., 1984); Assad vs. Mount Sinai Hospital, 725 F. 2d 837 (2nd Cir., 1984); Perez vs. Dana Corporation, 718 F. 2d 581 (3rd Cir., 1983); Murray vs. Branch Motor Express Company, 723 F. 2d 1146 (4th Cir., 1983); Smith vs. General Motors Corporation, 747 F. 2d 372 (6th Cir., 1984); Mets vs. Tootsie Roll Industries, 715 F. 2d 299 (7th Cir., 1983); Lincoln vs. Machinest District Nine, 723 F. 2d 627 (8th Cir., 1983); Rogers vs. Lockheed-Georgia, 720 F. 2d 1247 (11th Cir., 1983).

This issue is the application of this Court's holding in Chevron Oil Company vs. Huson, 404 U.S. 97, S. Ct. 349, 30 L. Ed. 2d 296 (1971) which sets forth principles for the decision of the issue of retroactivity. That case also arose in Louisiana but this Court was faced with the question of whether or not a Louisiana prescriptive period should be applied retroactively in a Federal setting. This Court stated, at 92 S. Ct. 356:

> "To hold that the respondent's lawsuit is retroactively time barred would be anamalous indeed. A primary purpose underlying the absorption of state law as federal law in the Lands Act was to aid injured employees by affording them comprehensive and familiar remedies. . . yet retroactive application of the Louisiana Statute of Limitations to this case would deprive the respondent of any remedy whatsoever on the basis

of superceding legal doctrine that was quite unforeseeable. To abruptly terminate this lawsuit that has proceeded through lengthy and, no doubt, costly discovery stages for a year would surely be inimical to the beneficent purpose of the Congress."

The Court noted that the respondent had not "slept on his rights" because he could not have known of the time limitation that was eventually installed.

In the present matter, Petitioners did not "sleep on their rights" either. There is no way that they could have known that the time honored rule of using the state statute of limitation in these cases would be changed over a year later by this Honorable Court. It should be kept in mind that the progress of this suit was stalled by the Manville bankruptcy so that a trial could not be had before this Court's decision in Del Costello.

The strange and unfair result of the retroactive application of the Del Costello rule is that those parties who did sleep on their rights and not file suit within a state limitation period less than six (6) months are allowed to proceed with their cases but those parties who did not sleep on their rights and who filed suit within their applicable state limitations period are now precluded from having their cases tried on the merits by the imposition of the six (6) month rule. Thus, those who did not act timely with regard to existing law and precedent are rewarded whereas those who did act timely under existing law and precedent are penalized and punished. Such results offend a sense of fair play and substantial justice and the problem should merit the attention of this Honorable Court.

CONCLUSION

For the foregoing reasons, this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

BRUSCATO, LOOMIS & STREET
ATTORNEYS AT LAW
P. O. BOX 2374
MONROE, LOUISIANA 71207
TELEPHONE: (318) 325-7577

By: _____

C. DANIEL STREET

DATED: April 10, 1986 ATTORNEYS FOR PETITIONERS

CERTIFICATE OF SERVICE BY MAIL

I, C. DANIEL STREET, a member of the bar of the Supreme Court of the United States and counsel of record for MELVIN EVANS, ET AL, Petitioners herein, hereby certify that on April 10, 1986, pursuant to Rule 33, rules of the Supreme Court, I served three (3) copies of the foregoing Petition for Writ of Certiorari on each of the parties herein, as follows:

On OUACHITA LOCAL NUMBER 654, UNITED PAPERWORKERS INTERNATIONAL UNION, and UNITED PAPERWORKERS INTERNATIONAL UNION, Respondents herein, by depositing such copies in the United States post office, Monroe, Louisiana, with first class postage prepaid, properly addressed to the post office address of Michael Hamilton and Robert Urann, counsel of record for Respondents OUACHITA LOCAL NUMBER 654, UNITED PAPERWORKERS INTERNATIONAL UNION, and UNITED PAPERWORKERS INTERNATIONAL UNION, 3340 Perimeter Hill, P. O. Box 1475, Nashville, Tennessee 37202 for Mr. Hamilton and 2540 Severn Avenue, Suite 400, Metairie, Louisiana 70002, for Mr. Urann.

All parties required to be served have been served.

C. DANIEL STREET

DATED: April 10, 1986

APPENDIX A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

MELVIN EVANS, et al.

—vs—

CIVIL ACTION NO. 82-1830

MANVILLE FOREST PRODUCTS CORPORATION, et al.

RULING

This lawsuit arises out of an alleged violaton of § 301 of the Labor Management Relations Act, 29 U.S.C. § 185 (1976) (LMRA). On 13 August 1981 Manville Forest Products Corporation (MFPC) notified the plaintiffs that they would be permanently laid off. The plaintiffs were again so notified on 14 AUgust 1981. On or about 22 September 1981 several of the plaintiffs filed a grievance against MFPC demanding that the company permit them to exercise certain seniority rights. MFPC denied the grievance on 16 October 1981. Approximately one month later the union voted not to pursue the aforementioned grievance. By mid-November, plaintiffs were advised of the union's decision. This action alleging unfair representation was filed approximately eight months later on 21 July 1982. These facts are not disputed.

Under § 301 of the LMRA, an employee may bring an action charging his employer with breach of a collective bargaining agreement, and his union with violating its duty of fair representation in mishandling the ensuing grievance. Vaca v. Sipes, 386 U.S. 171, 186-87, 87 S. Ct. 903, 17 L.Ed.2d 842 (1967). Neither § 301 nor any other section of the LMRA expressly designates an appropriate statute of limitations.

In DelCostello v. International Brotherhood of Teamsters, 462 U.S. 1, 103 S. Ct. 2281, 76 L.Ed.2d 746 (1983), the Supreme Court held that the six-month statute of limitations provided by § 10(b) of the National Labor Relations Act, 29

U.S.C. § 160 (1976), would apply to an employee's suit against an employer and a union under § 301 of the Labor Management Relations Act, 29 U.S.C. § 185 (1976). Thus, if the Del Costello rule applies retroactively, then plaintiff's claims are time barred since this action was not commenced until eight months after the union informed the plaintiffs that it would not pursue their grievances.

The six-month statute of limitations has been applied retroactively. Gray v. Amalgamated Meat Cutters Local 540, 736 F.2d 1055 (5th Cir. 1984); Edwards v. Sea-Land Service, Inc., 720 F.2d 857 (5th Cir. 1983). Plaintiffs' claims have prescribed. Id.

Signed in Alexandria, Louisiana on 7 August 1985.

F. A. LITTLE, JR.
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

MELVIN EVANS, et al.

—vs— CIVIL ACTION NO. 82-1830

MANVILLE FOREST PRODUCTS
CORPORATION, et al.

JUDGMENT

Having found that the above captioned suit was filed untimely, it is hereby

ORDERED, ADJUDGED AND DECREED that judgment be rendered in favor of defendants against plaintiffs and that the case be dismissed with prejudice at plaintiffs' cost.

SIGNED in Alexandria, Louisiana on 7 August 1985.

F. A. LITTLE, JR.
UNITED STATES DISTRICT JUDGE

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT
OFFICE OF THE CLERK
600 CAMP STREET
NEW ORLEANS, LA 70130

March 10, 1986

Mr. Robert H. SHemwell, Clerk
U. S. District Court
106 Joe Waggoner Fed. Bldg.,
500 Fannin St.,
Shreveport, LA 71101

No. 85-4615-MELVIN EVANS, ET AL., -vs- OUACHITA LOCAL NUMBER 654, ET AL., (Dist. Ct. NO. CA-82-1830 "A")

—

Enclosed to you only is a certified copy of the judgment of this Court in the above case issued as and for the mandate.

Enclosed to you only is a certified copy of the Rule 47.6 Decision in the above case issued as and for the mandate.

The Court having denied the motion for stay of mandate, enclosed to you only is a certified copy of the judgment of this Court in the above case issued as and for the mandate.

Having received from the Clerk of the Supreme Court a copy of the order of that Court denying certiorari, I enclose a certified copy of the judgment of this Court in the above case, issued as and for the mandate.

We have received a certified copy of an order of the Supreme Court denying certiorari in the above cause. This Court's judgment as mandate having already been issued to your office, no further order will be forthcoming.

Enclosed herewith are the following additional documents:

Copy of the Court's opinion.

Original record on appeal or review. (1 VOLUME)

Original exhibits.

Bill of Costs approved by this Court. Copy enclosed to counsel.

cc: (Letter Only)
Hon. F. A. Little, Jr.,
Mr. C. Daniel Street
Mr. Michael Hamilton

Sincerely,
GILBERT F. GANUCHEAU, Clerk
By: Sarah L. Holmes
Deputy Clerk

MDT-1

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 85-4615
Summary Calendar

MELVIN EVANS, ET AL.,

Plaintiff-Appellants,

versus

OUACHITA LOCAL NUMBER 654, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court for the Western District of Louisiana

(February 14, 1986)

Before CLARK, Chief Judge, WILLIAMS, and HIGGINBOTHAM, Circuit Judges.

PER CURIAM:*

Appellants filed a hybrid suit under section 301 of the Labor Management Relations Act, 29 U.S.C. § 185, against their former employer and former labor union on July 21, 1982. They alleged that the employer breached a collective

* Local Rule 47'5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

bargaining agreement, and that the union breached its duty of fair representation. The suit was timely filed under the state statute of limitations that controlled hybrid actions at that time. The employer's bankruptcy delayed resolution of the suit.

In 1983, the United States Supreme Court held that the six-month statute of limitations contained in section 10 (b), of the National Labor Relations Act, 29 U.S.C. § 160 (b), controls hybrid suits. Del Costello v. International Brotherhood of Teamsters, 462 U.S. 151, 154-55 (1983). This circuit subsequently held that Del Costello applies retroactively. Edwards v. Sea-Land Service, Inc., 720 F.2d 857, 859 (5th Clr. 1983); see also Gray v. Amalgamated Meat Cutters Local 540, 736 F.2d 1055 (5th Cir. 1984). The district court determined under DelCostello, Edwards, and Gray that appellants' claims were untimely, and dismissed them. On appeal, appellants assert that DelCostello should not bar a suit, such as theirs, which was properly filed under then existing law and precedent.

In deciding that DelCostello applies retroactively, the Edwards court utilized the analysis for determining whether a rule has retroactive application set out by the Supreme Court in Chevron Oil v. Huson, 404 U.S. 97 (1971). See Edwards, 720 F.2d at 860-62. This panel is bound by Edwards. The judgment appealed from is

AFFIRMED.